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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6997 OF 2006

Minar Chemicals Pvt. Ltd. ... Petitioners

V/s

Shri Musa Gani Sutar & ors. ... Respondents

Mr. K.S.Bapat for the petitioners.

Smt. M.A.Mulani for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 27TH AUGUST, 2007.

P.C.:

1. In Complaint (ULP) No. 99 of 2001, the Labour Court, Sangli has held that the respondent workman who was the complainant, is not a workman. The Labour Court has, therefore, not answered any of the issues raised in the complaint on merits. The Labour Court however directed the petitioners herein to pay salary and allowances to the respondent workman for the period from 1.1.1987 to 31.5.1988 within three months from the date of the order which was passed on 28.2.2002.

2. Both parties being aggrieved by the order of the

Labour Court preferred revision application before the Industrial Court. The revision applications were decided by a common judgment passed by the Industrial Court on 8th December, 2005. The petitioners filed Revision Application No. 1 of 2004 contending that the Labour Court could not have directed the payment of wages if it has come to the conclusion that the respondent workman was not a workman. The Industrial Court has reversed the order of the Labour Court and held that the respondent was a workman as defined under Section 3(5) M.R.T.U. & P.U.L.P. Act read with Section 2(s) of the Industrial Disputes Act. The Industrial Court then proceeded to decide the complaint on merits, although the Labour Court had not applied its mind to the merits of the case, the Industrial Court held that the petitioner workman had committed an unfair labour practice under Items 1(a)(b) & (f) of Schedule IV of the Act. The Industrial Court directed the reinstatement in its original post with continuity of service and payment of 60% back wages.

3. In my opinion, the Industrial Court has misdirected itself by deciding the other issues in the complaint when the Labour Court had not decided the complaint on merits. The Industrial Court could have only considered the issue as to whether the complainant was a workman or

not since another issues were unanswered by the Labour Court. The Industrial Court ought to have remanded the complaint for a decision from the Labour Court on merits.

4. The order of the Industrial Court to the extent that it decides the merits of the case is set aside.

5. The order of the Industrial Court holding that the complainant is a workman, is upheld. The complaint is remanded to the Labour Court to decide the merits of the complaint within six months from today.

6. Writ petition disposed of accordingly.

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